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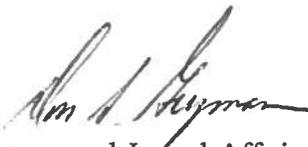
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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 27, 2018

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: Don S. Guzman, Chair 
Parks, Recreation, Energy, and Legal Affairs Committee

SUBJECT: **KAHULUI COMMUNITY CENTER PARK AND SURROUNDING
AREA MASTER PLAN** (PRL-10)

The Parks, Recreation, Energy, and Legal Affairs Committee is in receipt of correspondence dated March 12, 2018, transmitting the attached revised proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO HALE MAKUA HEALTH SERVICES."

The purpose of the revised proposed resolution is to grant a 75-year lease to Hale Makua Health Services, for the 34.082 acres identified for real property tax purposes as tax map key (2) 3-8-007:097, also referred to as the Kahului Community Center Park, Kahului, Maui, Hawaii, to establish a holistically planned senior community center and related facilities.

In addition to the revisions noted in the attached mark-up, may I please request you incorporate the following revisions to the revised proposed resolution and respective exhibits:

1. Please ensure the tax map key number is consistently referenced as (2) 3-8-007:097, including the reference in the first WHEREAS clause of the resolution.
2. Please provide a metes and bounds description of the property comprising Phase 1a and a metes and bounds description of the property comprising Phase 1b, to be labeled as Exhibits "C" and "E," respectively, to the proposed lease.
3. Please provide a revised exhibit, to be labeled Exhibit "G," of general Reservations, Covenants, Terms and Conditions. The exhibit would

replace the attached document labeled Exhibit “E” received at the Committee meeting, which included references to BLNR and appeared to be appropriate for property under a State Executive Order.

- a. With respect to this exhibit, it appears the prohibition against residential use (page 2, paragraph 3), will create an issue for the proposed lessee. In the presentation provided at the Committee meeting, Phase 1a is to be the site of a 42-bed care home and Phase 2 is being considered for an independent living facility and care homes. Please revise the proposed lease as needed to rectify any conflict between the proposed uses of the parcel and the prohibition against residential use. If appropriate, please consider incorporating a special condition in the lease to accommodate the issue.
 - b. The proposed lease defines the “Premises” as the entire parcel, comprising approximately 34.082 acres (page 2, paragraph A). The exhibit of general Reservations, Covenants, Terms and Conditions contains provisions that relate to the Premises. For instance, page 2, paragraph 4, of the general terms provides that Lessee shall indemnify Lessor and hold Lessor harmless from all claims and damages arising from Lessee’s use of the Premises. Please revise the proposed lease as necessary given the structure of phasing the transfer of portions of the Premises, rather than the entire parcel.
4. Exhibit “2”, paragraph 6(b), refers to conceptual site plan drawings as attachments. Please supply the missing attachments.
 5. The first “BE IT RESOLVED” paragraph provides:

“That it hereby finds that it is necessary and in the public interest to authorize **the grant of lease of real property** to Hale Makua; and” (emphasis added).

At the meeting, it was stated that the lease would be for the entire parcel, although control and management of the property would only be transferred from the County to Hale Makua in “phases,” starting with Phase 1a, consisting of the gateball field only.

- a. Please confirm that your Department agrees that a lease can be granted for the entire parcel even though control and management of only a portion of the parcel will be transferred upon execution of the lease, and that the remaining portions of the parcel can be transferred over in “phases,” as contemplated in the lease.
 - b. Please revise the first “BE IT RESOLVED” paragraph of the proposed resolution to incorporate by reference the terms and conditions of the proposed lease attached as Exhibit “1”. Please revise the proposed lease for clarification as needed.
 - c. Exhibit “A” to the proposed lease refers to a “gate ball field with field house.” Please advise whether the “field house” referenced in Exhibit “A” is a part of the “gateball field” to be transferred upon execution of the proposed lease. If so, please modify the description of Phase 1a on page 2, paragraph C, of the proposed lease, to include the field house.
6. Please revise Section “C,” page 2, of the revised proposed lease, relating to “Control and Management of the Premises,” to require that the lease for Phase 1b be verified in writing and recorded with the Bureau of Conveyances, State of Hawaii, at the time of conveyance of Phase 1b.
 7. Please confirm that the Department of the Corporation Counsel is opining that financial consideration (i.e., nominal rent) is not required for the lease.

Should you have any questions, please contact me or the Committee staff (Maggie Clark at ext. 7661, Carla Nakata at ext. 7659, or Pauline Martins at ext. 8039).

prl:ltr:010acc01

Attachments

cc: Mayor Alan M. Arakawa
Director of Parks and Recreation
Director of Finance
Planning Director
Jeffrey Ueoka, Deputy Corporation Counsel
Wesley Lo, Chief Executive Officer, Hale Makua Health Services

Resolution

No. _____

AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO HALE MAKUA HEALTH SERVICES

WHEREAS, the County of Maui is the owner of approximately 34.082 acres identified for real property tax purposes as tax map key (2)3-8-007:097, upon which the Kahului Community Center Park ("KCC") is located; and

WHEREAS, HALE MAKUA HEALTH SERVICES ("Hale Makua") is a 501(c)(3) Hawaii Nonprofit Corporation whose goal, in part, is dedicated to creating environments that promote quality of life for the frail elderly and their care partners; and

WHEREAS, Hale Makua has evolved over the past ^{seventy} ~~(70)~~ years, to develop programs designed to enhance the lives of Maui County's kupuna, including multi-faceted services which include ~~Adult Day Health, Care Homes, Home Health, Long Term Care, and Rehabilitation~~ components; and

WHEREAS, an integral component of Hale Makua's vision is the potential utilization of all or portions of ~~the~~ KCC, which is located adjacent to Hale Makua's Kahului campus; and

WHEREAS, KCC provides an ideal location in terms of its proximity to senior living and care facilities, to establish a holistically planned community for servicing the County's frail and elderly communities; and

WHEREAS, Hale Makua wishes to enter into the proposed lease attached hereto as Exhibit "1" for a period of seventy-five (75) years to use KCC for the purposes of expanding existing and creating new state-of-the-art rehabilitation and senior living facilities, health care services, and senior-oriented recreational opportunities; and

WHEREAS, the grant application submitted by Hale Makua is attached hereto as Exhibit "2"; and

WHEREAS, according to ^a memorandum dated January 31, 2018, ^{from} by the Department of Finance, attached hereto as Exhibit "3", the estimated fair market rental value per annum ^{of the parcel is} would be \$85,464; and

WHEREAS, pursuant to Section 3.36.090, Maui County Code, the Council of the County of Maui may authorize the grant of a lease of County real property by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby finds that it is necessary and in the public interest to authorize the grant of ^a lease of real property to Hale Makua; and *in the form attached hereto and incorporated herein by reference as Exhibit "1"*
2. That it hereby authorizes the Mayor, or ^{the Mayor's} his duly authorized representative, to execute all necessary documents associated with the grant of a lease for the real property; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Parks and Recreation, the Director of Housing and Human Concerns, the Director of Finance, and Hale Makua.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2018-0128
2018-03-12 Proposed Resolution

WHEREAS, the facilities contained within KCC are further described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, KCC is situated between Hale Makua and Hale Mahaolu facilities; and

WHEREAS, Hale Makua is interested in expanding its facilities and operations; and

WHEREAS, the Parties envision KCC as a park area with an emphasis on senior citizen use; and

WHEREAS, control and management of KCC will gradually be placed under Hale Makua as further planning is completed; and

WHEREAS, the Parties prepared this Lease for the entire KCC complex in the hopes that it will allow for Hale Makua to plan for its future expansion while making clear the overall intent to have the entire complex be part of a larger senior activity area;

NOW, THEREFORE, County, for and in consideration of Hale Makua's covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree to grant a lease to Hale Makua and Hale Makua hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The Premises shall comprise the area known as the "Kahului Community Center", identified as FMK (2) 3-8-007-097, an area approximately 34.082 acres, more accurately described in Exhibit "B", attached hereto and incorporated herein.

B. Term. The term of this Lease shall be seventy-five (75) years, commencing upon execution, unless sooner terminated as provided herein, with the understanding that the Council of the County of Maui ("Council") may set a distinct and separate term for each phase as it grants approval, unless sooner terminated as provided herein.

C. Control and Management of Premises. The control and management of the Premises shall be placed under Hale Makua in phases. Phase 1 shall be comprised of Phase 1a which shall include the "gateball field", and the Community Center; and Phase 1b shall include the Annex and the surrounding areas, as shown on Exhibit "C", attached hereto and incorporated herein. Control and management of Phase 1a shall be placed under Hale Makua upon execution of this Lease while control and management of Phase 1b shall be placed under Hale Makua at a time mutually agreed upon by the Department of Parks and Recreation and Hale Makua. The remaining portions of KCC shall

transferred to
more particularly described in Exhibit "E" attached hereto and made a part hereof, and as depicted in the aerial photograph attached hereto and made a part hereof as Exhibit "D".

Park

tax map key

comprized of

and Phase 1b. Phase 1a shall consist of

as more particularly described in Exhibit "C", attached hereto and made a part thereof and

consist of the Kahului community center building?

transferred to

as depicted in the aerial photograph attached hereto and made a part hereof as Exhibit "D".

remain under the control and management of the County. Hale Makua shall not be responsible or liable for any areas that are not under its control and management, with the understanding that Hale Makua shall bear full liability and responsibility for those areas under its control and management.

When the Parties agree that County has adequate or replacement facilities and Hale Makua is prepared to take control and management of other areas of KCC, the Parties shall submit to the Maui County Council, for its approval by Resolution, agreements to transfer control and management of other areas of KCC to Hale Makua in additional Phases. No transfer shall take place without Council approval.

It is the understanding of the parties that Hale Makua may not take control of the drainage areas.

D. Use of Premises. Hale Makua shall utilize all areas of KCC under its control and management to further its purpose as a Hawaii nonprofit corporation.

E. Maintenance. The areas of KCC under the control and management of Hale Makua shall be maintained at all times in clean and usable condition for the term of this Agreement. If the Director of the Department of Parks and Recreation ("Director") determines, in the Director's sole but reasonable discretion, that the areas are not being properly maintained, the Director may transmit a written notice to Hale Makua outlining the request for maintenance. Failure to initiate a cure within thirty (30) days and fully remedy said maintenance issue(s) within ninety (90) days of receipt of written notice, to the reasonable satisfaction of the Director, shall be deemed a breach of this Agreement. Provided, however, in the case of maintenance issue(s) that cannot be fully remedied within ninety (90) days of receipt of written notice or where a cure cannot be initiated within thirty (30) days of receipt of written notice, Hale Makua shall commence promptly to cure the maintenance issue(s) and thereafter diligently undertake the curing of said maintenance issue(s) until said maintenance issue(s) are remedied to the reasonable satisfaction of the Director, the time within which the maintenance issue(s) may be cured may be extended for such period, as deemed necessary by the Director, to complete the curing thereof with diligence, failure to cure said maintenance issue(s) to the reasonable satisfaction of the Director within the time frame set forth by the Director shall be deemed a breach of this Agreement.

F. Shared Use. The Parties understand that there will be a period of time where only portions of KCC are under the control and management of Hale Makua. During these periods, the Parties agree to work together to ensure that County and Hale Makua operations may be conducted harmoniously, with the understanding that until all of KCC is under the control and management of

Hale Makua, the Director will have the ultimate authority and discretion to resolve issues regarding conflicting uses in KCC.

G. Permit Required. In the event that Hale Makua desires to have temporary, exclusive use of portions of ~~the~~ KCC, outside of the areas under its control and management, Hale Makua shall apply for a use permit with the Department of Parks and Recreation.

H. Conditions of Grant of Real Property. As the recipient of a grant of a lease of real property, Hale Makua shall comply with all requirements of Chapter 3.36, Maui County Code, Maui County Grants Program. ~~Including, that~~ within three (3) weeks after the end of each fiscal year, Lessee shall transmit to the Department of Parks and Recreation a report, using Exhibit "D", provided herewith, containing the following information for the previous fiscal year:

1. Program status summary.
2. Program data summary.
3. Summary of participant characteristics.
4. Changes in real property tax assessment for the real property.
5. Earnings from the grant of real property.
6. Narrative report.

I. Breach. In the event of a material breach of any term of this Agreement, the County shall have the authority to enjoin the entry upon and use of ~~the~~ KCC by Hale Makua. If after sixty (60) calendar days the material breach or breaches have not been remedied to the Director's reasonable satisfaction, the Director may unilaterally terminate this Lease. The materiality of a breach shall be determined in the Director's sole and absolute discretion.

The County may also pursue all available legal and equitable remedies for enforcement and shall be entitled to an award of attorney's fees and court costs if the County is the prevailing party.

J. Termination. In the event that Hale Makua ceases operations at any time after the execution of this Lease, this Lease shall automatically terminate. The Parties may terminate this Lease by mutual agreement, in writing, upon ninety (90) days notice.

K. General Terms and Conditions. Hale Makua shall comply with the General Terms and Conditions, attached hereto and incorporated herein as Exhibit "E". In the event of a conflict or inconsistency between the General Terms and Conditions and the terms contained in the body of this Lease, the terms in the body of this Lease shall control.

APPROVAL RECOMMENDED:

BUTCH KAALA BUENCONSEJO
Director, Department of Parks
and Recreation

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2018-0128
2018-03-05 Lease (Revised Version)

LESSOR:

COUNTY OF MAUI

By _____
ALAN M. ARAKAWA
Its Mayor

By _____
MARK R. WALKER
Its Director of Finance

LESSEE:

HALE MAKUA HEALTH SERVICES

By _____
(Signature)

(Print Name)

Its _____
(Title)

By _____
(Signature)

(Print Name)

Its _____
(Title)

STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this _____ day of _____, 20____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this ___ day of _____, 20___, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

_____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
) SS.
COUNTY OF MAUI

On this ____ day of _____, 20__, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

STATE OF HAWAII
COUNTY OF MAUI

}
} SS.
}

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

KAHULUI COMMUNITY CENTER FACILITIES LIST

Park Structures

Community Center with two divisible meeting rooms, a stage, and a kitchen.

Parks offices on site.

Annex with Kitchen

Kokua Pool

Picnic Areas

Large barbecue grill located at the Community Center

Sports Areas

Two soccer/baseball fields, four tennis courts, two playground sets, gate ball field with field house, jogging/bicycle path.

Parking

Five lots containing a total of 150 spaces

Public Restrooms

Restrooms available inside Community Center and Annex. One comfort station located near parking lot off of Onehee Street. One ADA portable toilet available near tennis courts.

DESCRIPTION

**KAHULUI PARK SUBDIVISION
LOT 3-A**

Being a portion of Grant 3343 to Claus Spreckels, situated at Wailuku, Island and County of Maui, State of Hawaii.

Beginning at the Northeasterly side of the lot on the Southerly side of Wakea Avenue as shown on subdivision plat "Kahului Park Subdivision" (L.U.C.A. File No. 3.1583) prepared by Bruce R. Lee, LS (Surveyor Certificate No. 5983) of Newcomer-Lee Land Surveyors, Inc. dated and revised on December 22, 1994, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being:

1,294.66 feet North

7,124.69 feet East

and running by azimuths measured clockwise from True South:

1. 279° 40' 50" 153.41 feet along the Southerly side of Wakea Avenue, being also the remainder of Grant 3343 to Claus Spreckels;
2. Thence along the Southwesterly intersection of Wakea Avenue and South Hina Avenue, being also the remainder of Grant 3343 to Claus Spreckels, on a curve to the right with a radius of 20.00 feet, the radial azimuth from the radius point to the beginning of the curve being: 186° 41' 40"; the radial azimuth from the radius point to the end of the curve being: 271° 25' 50"; and the chord azimuth and distance being: 319° 03' 45" 26.96 feet;
3. Thence along the Westerly side of South Hina Avenue, being also the remainder of Grant 3343 to Claus Spreckels, on a curve to the left with a radius of 1,097.36 feet, the radial azimuth from the radius point to the beginning of the curve being: 91° 25' 50"; the radial azimuth from the radius point to the end of the curve being: 80° 07' 50"; and the chord azimuth and distance being: 355° 46' 50" 216.07 feet;
4. 66° 00' 628.03 feet along Lot 4-A-3, being also the remainder of Grant 3343 to Claus Spreckels;
5. 4° 50' 40" 312.27 feet along same;

6. 36° 30' 120.00 feet along same;
7. 127° 56' 191.57 feet along Lot 2-A-1, being also the remainder of Grant 3343 to Claus Spreckels;
8. 36° 30' 500.15 feet along same;
9. 307° 56' 791.39 feet along same;
10. Thence along the Westerly intersection of Laau Street and Kaulana Street, being also the remainder of Grant 3343 to Claus Spreckels, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
352° 56' 28.28 feet;
11. 37° 56' 64.97 feet along the Northwesterly side of Kaulana Street, being also the remainder of Grant 3343 to Claus Spreckels;
12. Thence along same on a curve to the left with a radius of 5,952.15 feet, the radial azimuth from the radius point to the beginning of the curve being: 127° 56';
the radial azimuth from the radius point to the end of the curve being: 124° 26' 49";
and the chord azimuth and distance being:
36° 11' 24" 362.13 feet;
13. Thence along Lot 299 of the Kahului Town Development 11th Increment (File Plan 1051), being also the remainder of Grant 3343 to Claus Spreckels, on a curve to the left with a radius of 20.00 feet, the radial azimuth from the radius point to the beginning of the curve being: 304° 26' 49";
the radial azimuth from the radius point to the end of the curve being: 212° 00';
and the chord azimuth and distance being:
168° 13' 25" 28.88 feet;
14. 122° 00' 182.78 feet along Lot 299 and Lot 298 of the Kahului Town Development 11th Increment (File Plan 1051), being also the remainder of Grant 3343 to Claus Spreckels;

15. Thence along Lot 298 of the Kahului Town Development 11th Increment (File Plan 1051), being also the remainder of Grant 3343 to Claus Spreckels, on a curve to the left with a radius of 20.00 feet, the radial azimuth from the radius point to the beginning of the curve being: 212° 00'; the radial azimuth from the radius point to the end of the curve being: 124° 00'; and the chord azimuth and distance being: 78° 00' 27.79 feet;
16. 214° 00' 69.34 feet along the Southeasterly corner of Kaimana Street and Uhu Street, being also the remainder of Grant 3343 to Claus Spreckels;
17. 122° 00' 1,104.89 feet along the Northeasterly side of Uhu Street, being also the remainder of Grant 3343 to Claus Spreckels;
18. Thence along the Easterly intersection of Uhu Street and Onehee Avenue, being also the remainder of Grant 3343 to Claus Spreckels, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 167° 00' 28.28 feet;
19. 212° 00' 813.61 feet along the Southeasterly side of Onehee Avenue, being also the remainder of Grant 3343 to Claus Spreckels;
20. Thence along same on a curve to the right with a radius of 1,392.40 feet, the chord azimuth and distance being: 225° 00' 626.44 feet;
21. 238° 00' 108.27 feet along same;
22. 328° 00' 55.00 feet along Lot 5-A-2, being also the remainder of Grant 3343 to Claus Spreckels;
23. 268° 57' 50" 58.31 feet along same;
24. 328° 00' 65.00 feet along same;
25. 238° 00' 344.47 feet along same;
26. 286° 10' 266.83 feet along same;
27. 192° 40' 81.31 feet same to the point of beginning and containing an area of 34.082 Acres.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

Sharon Y. Toyama

Sharon Y. Toyama
Licensed Professional Land Surveyor
Certificate Number 13713

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
February 27, 2018

HMHS01

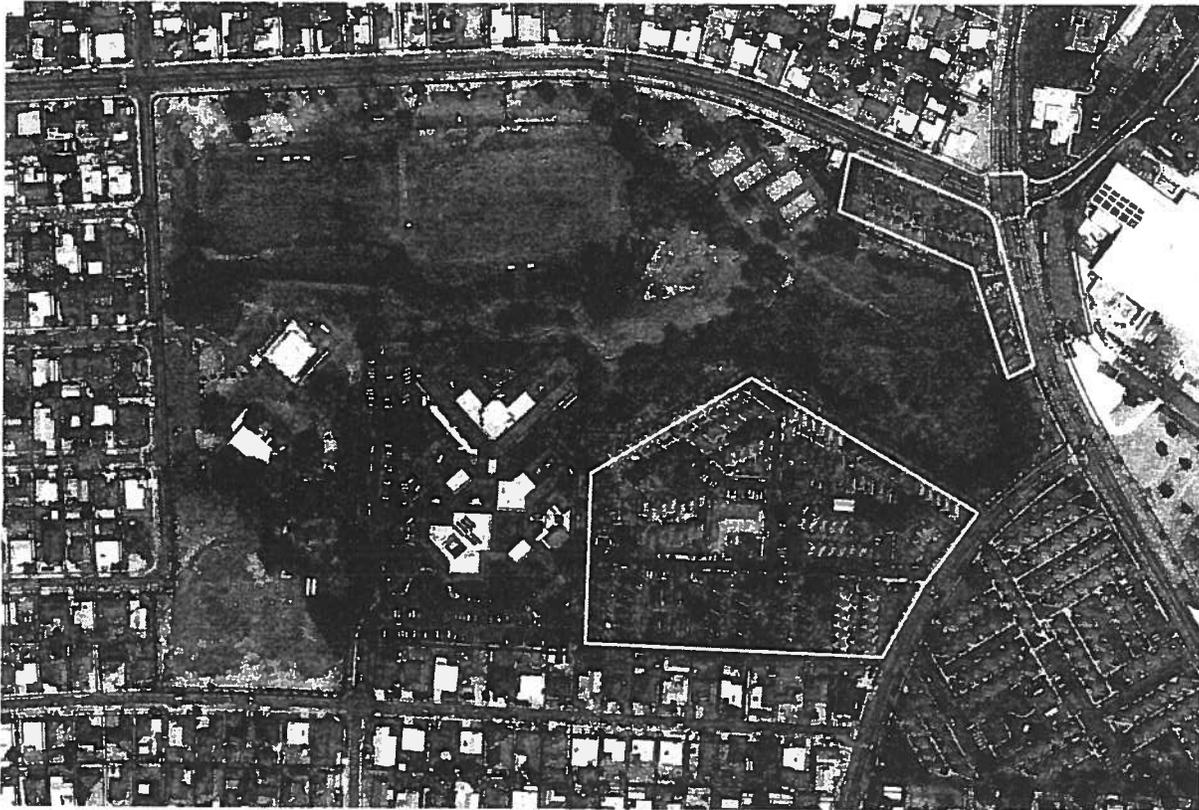


Exhibit "X"
D

HALE MAKUA MASTER PLAN
 HALE MAHAOLU
 Independent Living

Aerial Photograph Figure 2
KAHULUI SITE PLAN



Hale Makua Master Plan | G70



DEPARTMENT OF PARKS AND RECREATION

700 Hall'a Nako'a Street, Unit 2, Wailuku, Hawaii 96793

ANNUAL REAL PROPERTY GRANT REPORT

Report Period: Fiscal Year July 1, _____ - June 30, _____

ORGANIZATION: _____

Tax Map Key Number(s): _____

Department of Parks and Recreation's Mission: The purpose of the Department of Parks and Recreation is to provide safe, satisfying and cost-effective recreational opportunities for the residents of and visitors to Maui County.

INSTRUCTION

Provide a narrative response to each question below for each quarter and fiscal year.

I. Program Data/Status Summary

- a. List each program goal/benchmark for the leased/licensed site and how it contributes towards the Parks Department's mission (noted above).
- b. What objectives/action steps were completed this fiscal year for each goal?
- c. What measurable outcomes were achieved this fiscal year?
- d. Were your organization's programs/activities open to the public? If so, how were they promoted to residents and visitors?
- e. Give actual number of people attended at activities, programs and events on property for each quarter of the fiscal year.
- f. What objectives/actions steps will be accomplished during the next fiscal year?

II. Narrative Report

- a. What program challenges occurred this fiscal year and how were they addressed and/or resolved?
- b. Describe any staff changes in your organization.
- c. Were there any fundraising activities on leased/licensed property? If so, please indicate how many, type of activity, primary beneficiary of the fundraising, and how your organization participated and benefited from the activity.
- d. Describe improvements on the property, its condition, and your risk evaluation program. How often are site inspections done and by who?
- e. Disclosure of any organizational conflict of interest and criminal violations.
- f. Were audits done this fiscal year? When is the next audit planned for your organization?

Please submit the following information with this report:

- a. Board of Directors' Minutes.
- b. Updated list of Board of Directors
- c. Financial status report including but not limited to the total revenue generated on the property leased/licensed.
- d. Update Tenant Contact Information Form.
- e. Current Liability Insurance Certificate naming the County of Maui as additional insured.

Report Prepared by: _____
Print Name/Title Signature Date

EXHIBIT " ~~D~~ "
F

Replace .

EXHIBIT "E"

GENERAL TERMS AND CONDITIONS

In the event the following conditions conflict with any term, provision, condition and/or covenant contained in the body of the Agreement and any subsequent amendments, the terms, provisions, conditions and/or covenants contained in said body shall prevail.

- 1) RECORD KEEPING. Grantee shall keep records and prepare reports, including detailed, separate financial records relating to all grant funds received from the County. All accounts shall be prepared and maintained according to generally accepted accounting principles and as otherwise provided by law to ensure the effective administration of the grant. Grantee shall maintain such accounts and documents in a manner as to permit an expeditious determination to be made at any time of the status of funds within the award, including any disposition of all funds received from County and the nature and amount of all charges claimed to be against such funds. To facilitate the auditing process, Grantee's general ledger shall be organized to reflect the separation of County grant funds and expenses from other funds of the Grantee. Grantee shall maintain in its files, at all times, documentation certifying that the work described in any invoices, executed contracts or reimbursement requests submitted to the County are complete, correct, and in accordance with the terms of this Agreement.
- 2) FINANCIAL AUDITS. Grantee shall supply County with a copy of its annual financial statements that shall be prepared by a Certified Public Accountant. Grantee shall allow County to audit Grantee's records, report books, and other financial records upon request of County to determine compliance with the terms of this agreement. Grantee shall cooperate fully and assist County in such an audit.
- 3) NONPROFIT STATUS. If Grantee is a nonprofit organization, Grantee shall establish and be governed by bylaws or policies that shall include provisions relating to nepotism and management of potential conflict of interest situations, as required by Section 3.36.040(c), Maui County Code.
- 4) INSURANCE. In order to protect itself as well as the County under this Agreement, Grantee shall obtain, pay for, and keep in force throughout the period of this

Agreement comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard & Poor" ratings.

The insurance policy, as evidence by issuance of a "Policy Endorsement", shall name County, its officers, employees and agents as "Additional Insured", and shall include a duty to defend the County, its officers, employees and agents against any loss, liability, claim, and demand for injury or damage, including but not limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Grantee's actions and/or performance of this Agreement.

Unless otherwise agreed to by County through the joint decision and discretion of the Director of the Department of Finance and the Director of the Department of Parks and Recreation, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Grantee shall furnish the County with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Agreement, the Grantee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements.

Unless waived by the County, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given the County thirty (30) calendar days prior written notice of the intended cancellation or termination.

- 5) INDEMNIFICATION. To the extent permitted by law,

Grantee shall indemnify, defend, release, and hold harmless the County, its officers, agents, and employees from and against any and all manner of action and claim arising, including serious bodily injury or death, either directly or indirectly, out of or resulting from the errors, omissions, or acts of Grantee, its officers, its employees, or its agents occurring during, or in connection with this Agreement. The Grantee's obligations under this section shall survive and shall continue to be binding upon Grantee notwithstanding the expiration, termination or surrender of this Agreement.

- 6) EMPLOYEE COMPENSATION. Grantee shall not compensate its employees more than the wages then prevailing in the State of Hawaii for employees with similar skills and abilities. Grantee shall not pay any commissions, bonuses or similar to its employees.
- 7) COUNTY RECOGNITION. Grantee shall give the County and State of Hawaii, if applicable, appropriate recognition in all grant-funded programs and printed materials. All such printed materials must be approved by the County prior to printing and/or use.
- 8) GRANTEE COMPLIANCE. Grantee shall strictly comply with its articles of incorporation and/or bylaws and all relevant County, State and Federal rules and regulations concerning Grantee's policies and operations.
- 9) NO DISCRIMINATION. Grantee shall not discriminate in the hiring of staff, compensation, terms or conditions of employment of individuals, use of volunteers, or delivery of client services on the basis of sex, sexual orientation, national origin, age, race, color, religion or disability. Grantee shall comply with all applicable Federal and State laws prohibiting discrimination.
- 10) MODIFICATION OF AGREEMENT. Any modification, alteration or change to this Agreement, including, but not limited to, modification of the services to be performed, modification of the scope of services to be performed, extension of time of performance, or changes to the approved budget, shall be made by written supplemental agreements executed by the County and Grantee.
- 11) SUSPENSION OR TERMINATION OF AGREEMENT. If, for any cause, the County finds that the Grantee has failed to satisfactorily fulfill in a timely or proper manner its obligations under this Agreement or if the Grantee breaches any of the promises, terms, or conditions of

this Agreement and, having been given reasonable notice of an opportunity to cure any such default, fails to take satisfactory corrective action within the time specified by the County, the County shall have the right to suspend or terminate this Agreement by giving written notice to the Grantee of such suspension or termination. Further, the County may suspend or terminate this Agreement without cause by giving written notice to the Grantee thirty (30) calendar days before the effective date of such suspension or termination. Upon termination of this Agreement, all finished or unfinished documents, data, studies, and reports purchased or prepared by the Grantee pursuant to this Agreement shall be transferred to the County.

- 12) COSTS INCURRED DUE TO SUSPENSION OR TERMINATION. The County shall not reimburse the Grantee for any costs incurred by the Grantee during suspension or after termination of this Agreement unless the County authorizes such costs in the Notice of Suspension or Termination issued to the Grantee.
- 13) PRODUCTION OF INFORMATION. If applicable, Grantee shall comply with all requests of the State of Hawaii for information and reports regarding the project and Grantee's operations.
- 14) COMPLIANCE WITH LAWS. Grantee shall comply with all applicable Federal, State and County laws, rules, regulations, licensing requirements, applicable accreditation and other standards of quality generally accepted in the field of Grantee's activities.
- 15) INSPECTIONS AND MONITORING. Grantee shall permit the County or its duly authorized agent free access to any al all Grantee programs, facilities, event or activities without advance formal notification or appointment when such access is for the express purpose of monitoring, investigation, researching or formulating programs, services or related policies and procedures or when County is otherwise in the pursuit of any official business relative to any aspect of this agreement.

END OF EXHIBIT "E"

COUNTY OF MAUI
Grant of Real Property
NARRATIVE APPLICATION

1. *Provide a description of the nature and purpose of the agency requesting the lease or license- to-occupy, including:*
 - a. *Goals of the Organization*
 - b. *Population clientele served*
 - c. *Services provided (including numbers served)*
 - d. *Sources of funding/support for the organizations services and activities*
 - e. *Administrative/management structure*

Hale Makua Health Services (HMHS) was established by the Maui community in 1946, shortly after World War II, to care for frail, vulnerable elders who needed 24-hour care and support, and who had no family to care for them or resources to provide the care. From its humble beginning 71 years ago, HMHS has grown from a single 24-bed residential home to include two nursing homes with rehab centers, a home health care agency, an adult day health center, and an adult residential care home. Our mission, "We improve the well-being of those in our care through compassionate personalized health services, in our home and yours" reflects the commitment we have to providing quality care with competence and compassion to Maui's frail elders and disabled individuals of all ages throughout the continuum of healthcare services that the organization provides.

Hale Makua Health Services is the ninth largest non-government employer, employing over 450 Maui residents in a variety of fields ranging from nursing and nutrition services to human resources and finance. The organization contributes over \$34 million annually to the economy and serves over 1,200 frail elderly and disabled individuals in its homes and in the community annually.

- a. **Goals of the Organization**
 - Increase skilled nursing facility days by 860 days annually
 - Increase intermediate care days at the nursing homes by 2,801 days annually
 - Decrease overtime incurred at Hale Makua Kahului by 10%
 - Modify payer contracts for a financially beneficial payment structure
 - Partner with Maui Medical Group to provide physician services and eliminating the need to pay for a physician to fly in from the mainland
 - Continue to secure \$400,000 in State funding to help cover the cost of providing care for the under- and uninsured
 - Create a master plan for Hale Makua Kahului that will expand services and provide a continuum of health care services for Maui's frail elderly and disabled individuals

EXHIBIT "2"

b. Population clientele served

Hale Makua Healthy Services serves Maui County residents and visitors of all ages, primarily individuals over the age of 65 and are low income.

c. Services provided (including numbers served)

The organization's primary services are centered on the two nursing homes with attached rehab center, which have a total of 344 federally and state licensed beds for providing skilled and intermediate nursing care services, including in-patient and out-patient physical, occupational and speech therapy. HMHS is the largest long-term care provider on the island of Maui, serving about 750 individuals annually and discharging over 50% of individuals served back to their own home. The only other nursing home provider is Kula Hospital with 104 beds.

In addition to its two nursing homes, HMHS has a CHAP-accredited home health care agency, which provides skilled nursing and therapy (physical, occupational and speech) services in the comfort of clients' homes. About 400 individuals are served annually through the home health program.

The adult day health center is the only licensed Adult Day Health program on the island of Maui, and provides day care services and an exercise program for clients during the day and cares for about 75 seniors annually.

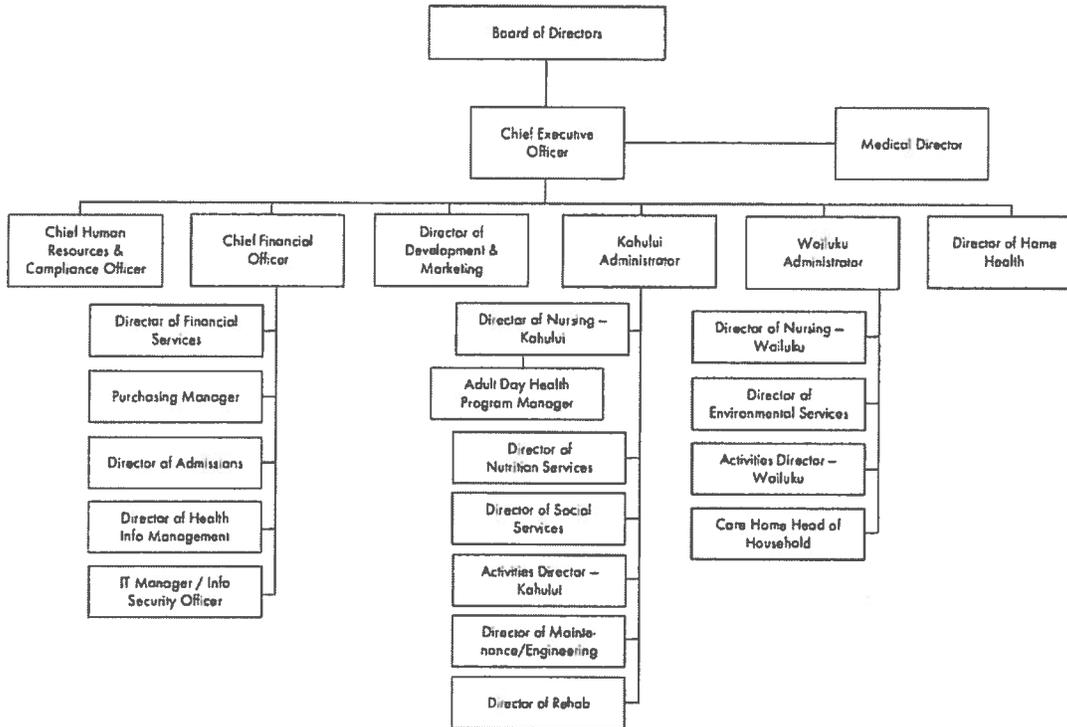
Most recently in 2013, HMHS converted a wing of the Wailuku nursing home that had been closed due to a severe decline in census to a licensed Adult Residential Care Home for up to 22 residents. The care home provides care for individuals who need around the clock supervision and some assistance with activities of daily living. The care home cares for about 25 individuals annually, including respite care from three to 30 days.

d. Sources of funding / support for the organization's services and activities

Funding of Hale Makua Health Services' operations comes primarily through government reimbursements from Medicare and Medicaid. Medicaid is an eligibility program for persons who qualify for financial assistance and Medicare is an entitlement program for persons who have paid into the social security system. Over 85% percent of the residents at Hale Makua Wailuku and over 75% of the nursing home residents at Hale Makua Kahului are Medicaid recipients. Medicaid payments do not cover the full cost of care per day. In fact, Hale Makua loses between \$9 – 11 per day, per Medicaid resident. Medicare provides coverage for 6% of the residents at Kahului Hale Makua and 2% at Wailuku Hale Makua. Private or Kaiser healthcare insurance provides coverage for an average of 13-14% of the residents.

In addition, Hale Makua Health Services is actively engaged in fundraising to support its mission and programs. Through State and County grants, special events, annual appeals and other fundraising activities, Hale Makua raised over \$1.3 million in 2017.

e. Administrative / management structure



2. Please explain the intended usage of the facility (or site) for which the lease/license-to-occupy is being requested. Included information about:

- a. The specific use(s)/activity(ies) to be conducted at the facility/site
- b. The reason and justification of need for these services/activities
- c. The target population to be served at the facility/site
- d. The estimated average number of people using the facility/site on a weekly basis
- e. The frequency of use (i.e. daily, monthly, quarterly, etc. and number of hours per day) of the facility/site

a. The specific use(s)/activity(ies) to be conducted at the facility/site

The site will be utilized to expand Hale Makua Health Services' existing healthcare services to potentially include in phase 1:

- A 42-bed Expanded Adult Residential Care Home (ARCH) II for individuals needing moderate assistance to nursing home level of care, potentially dedicating a portion of beds for memory care
- A state-of-the art rehabilitation center to provide in-patient and out-patient

- physical, occupational and speech therapy with 45 private rooms
- An Adult Day Health center for up to 80 individuals
- An Adult Day Care center for up to 80 individuals
- Relocation of central plant to a new central services building

Possibilities for phase 2 currently include a senior services center, a 110 bed assisted living facility, and a 100 bed Continuing Care Retirement Community (CCRC). CCRCs are retirement communities with accommodations for independent living, assisted living, and nursing home care, offering residents a continuum of care with the goal of giving individuals the ability to move between levels of care as needed.

b. The reason and justification of need for these services/activities

According to the 2010 Census, Maui's resident population is expected to grow from 129,471 in 2005 to 176,687 in 2030; indicating a population increase of 16% between 2010 and 2020. In next five years on Maui there will be a 9% increase in the 85 and over cohort and a 37% increase in the 75-84 cohort.

Contributing to the explosion in numbers is the surge of Baby Boomers, and an overall longer life expectancy. Nationally, baby boomers have not reached the typical age for nursing home level of care, there will be significant growth nationwide and increased demand for these services

Maui also sees an in-migration of retirees. By 2030, individuals over the age of 65 will represent 20% (35,337 people) of Maui's population. In comparison only 5.88% of Maui's population was over the age of 65 in 1970. This indicates that there will be even greater numbers of individuals exiting the workforce, and even more individuals who may eventually need nursing care as they age.

c. The target population to be served at the facility/site

The target population to be served are seniors who live on the Island on Maui, and individuals who need skilled therapy in recovering from injury or illness.

d. The estimated average number of people using the facility/site on a weekly basis

For phase 1, approximately 261 people could use the facilities at any given time, plus staff. For phase 2, there is potentials that an additional 225 individuals could be served, plus staff. At this time staffing ratios have not yet been determined.

e. The frequency of use (i.e. daily, monthly, quarterly, etc. and number of hours per day) of the facility/site

Individuals being provided housing and rehabilitation services on-site would most likely use the site around the clock daily. Whereas individuals attending Adult Day Health and Adult Day Care programs could vary in attendance of eight to nine hours on one to six days per week. Usage of the senior services center could range from daily to monthly.

3. Explain how/where the services/activities described above are currently being carried out and how use of the requested facility/site will improve delivery of these services/activities.

Currently Hale Makua Health Services provides rehabilitation, nursing home and adult day health services at the Hale Makua Kahului facility located at 472 Kaulana Street in Kahului. The nursing home has 254 beds licensed for skilled and intermediate care. Of those beds, only 16 are dedicated to individuals needing rehabilitation. At times there are 35+ individuals who reside at Hale Makua Kahului who are in need of in-patient therapy. The existing number of dedicated bedrooms and the 1,500 square foot rehab gym are not sufficient for these demands. In addition, the current 1,000 square foot Adult Day Health center cannot accommodate more than 40 program participants limiting the number of seniors that we are able to provide services to. As the only provider of a State-licensed adult day health program that provides therapeutic exercise, there will be an increasing need as Maui's aging population grows, and the existing space will not be able to grow to meet the need.

By relocating the rehab and adult day health services in Kahului to the requested site, Hale Makua Health Services will be better positioned to meet the demands of Maui's growing senior population by providing more options and greater availability of senior and healthcare related services in a centralized area. In addition, phase two of this project will give seniors more affordable living options, enable seniors to age in place, and create a continuum of retirement services in a centralized location on Maui.

4. Describe the management plan for the facility / site. Who and how will daily management of the facility / site be handled?

Daily management of the facility will be the same as the management of the current programs. The Director of Rehab currently located at Hale Makua Kahului will be relocated to the new rehab facility with oversight provided by the Hale Makua Kahului Administrator. A Head of Household will be hired to oversee operations of the new ARCH II expanded buildings. The current Adult Day Health Program Manager at Hale Makua Kahului will be relocated to oversee Adult Day Health and Adult Day Care operations at the new site. Central plant and services which include maintenance, purchasing, business office, marketing, admissions and nutrition services will be expended to serve these relocated operations as well as current operations.

5. What would the impact be on the services/activities to be conducted at/through the facility/site if a lease/license to occupy is not granted?

If the site were not granted, Hale Makua Health Services' operations would remain as they are currently. At this time, this lease presents a huge opportunity for the organization to expand senior care services a critical time when the senior population on Maui is growing and the potential demand will exceed current supply. The potential impact to the Maui community is that there will not be enough in-patient rehab beds or senior day care space to meet the Island's future needs.

In addition, Hale Makua Health Services' facilities in Kahului and Wailuku are aging and were built in 1978 and 1966 respectively. The organization recently completed a study on the cost to maintain and repair both facilities. Without a change to current programming and current reimbursement, the costs to maintain and repair the facilities over the next few years are so prohibitive, they would jeopardize the organization's ability to continue providing care for Maui's frail elderly and disabled individuals.

6. *If major improvements/construction is planned on the requested site, please provide the following:*
- a. *Budget including projected costs and funding sources and amounts. Please identify firm/committed funding sources and amounts.*
 - b. *Description of the planned improvement including plans or at least a conceptual drawing(s) of the facility.*
- a. Budget including projected costs and funding sources and amounts. Please identify firm / committed funding sources and amounts.**
Hale Makua Health Services is currently in the process obtaining cost estimates, which will be followed by a plan to secure funding.
- b. Description of the planned improvement including plans or at least a conceptual drawing(s) of the facility.**
Conceptual site plan drawings are attached.

ALAN M. ARAKAWA
Mayor



MARK R. WALKER
Director

MARCI M. SATO
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

January 31, 2018

MEMORANDUM

TO: Jeff Ueoka, Corporation Counsel
VIA: Mark Walker, Director of Finance
FROM: Kyle Shimizu, Real Property Appraiser Supervisor 
Subject: 3-8-007-097-0000 Fair Market Rental Value

This letter is in response to your request dated January 31, 2018 to obtain the fair market rental value of the property located at TMK: 3-8-007-097-0000.

The estimated building value of the subject property as of January 1st, 2018 is \$949,600. Currently, the prevailing fair market rate per annum is estimated to be 9%. Therefore, the estimated fair market rental value per annum would be \$85,464 ($\$949,600 \times .09$).

All values of the subject property stated above were established using standardized mass appraisal techniques by the Real Property Tax Division, for real property tax purposes only.

This response is prepared solely for the use of the Department of Corporation Counsels' internal purposes, and is not intended to be used for lending or any other purposes. No site inspection of the subject parcel was conducted for the purposes of this response.

If you have any more questions about the valuation of this property, or the methods we used to arrive at our final figure, I can be reached at 270-7798.

EXHIBIT "3"

EXHIBIT "E"

RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever including strip mining. "Minerals" as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver bauxite, bauxitic clay, dispore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and without limitation thereon all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the Premises and not for sale to others.

B. All surface and ground water appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the State of Hawaii of the rights reserved in this paragraph, just compensation shall be paid to Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises, this Lease shall be subject to the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Status, over prehistoric or historic remains found in, on, or under the land.

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

1. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality

RECEIVED AT PRL MEETING ON 3-13-18
Submitted by Corp Counsel

of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

2. Utility Services. Lessee shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone and other services or utilities used by Lessee on the Premises during the term of the Lease unless otherwise expressly agreed in writing by Lessor.

3. No Residential Use. Lessee, its agents, employees and invitees, shall not use the Premises as temporary or permanent residence. Lessee shall not permit or allow any person to live on the Premises.

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold Lessor and the State of Hawaii harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arise from the construction of Lessee's improvements, from the failure of Lessee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, or from any act or negligence or omission to act of Lessee, its agents, contractors, servants, employees, concessionaires or licensees in or about the demised Premises or in any connection with this Lease. In case any action or proceeding be brought against Lessor, the State of Hawaii, or both (in addition to Lessee) by reason of any such claim, even though such claim be based on alleged fault of Lessor, the State of Hawaii, or both, Lessee agrees to pay the reasonable costs and expenses thereof, secured against Lessee by reason of such action or proceeding. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

5. Costs of Litigation. In case Lessor and/or the State of Hawaii, without any fault on their respective parts, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's fees, which may be incurred by or paid by Lessor and/or the State of Hawaii in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against the Lessor and the State of Hawaii. All inventory, property, vehicles, approved improvements and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

7. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

8. Mortgage. Lessee may mortgage or create a security interest in the demised premises or any portion thereof with the prior written approval of the Director, Department of Parks and Recreation, and the BLNR, provided that, in the case of default the leasehold interest may be foreclosed only by judicial action pursuant to Chapter 667, Hawaii Revised Statutes, and the leasehold interest shall be transferred to the purchaser by assignment of lease for the remainder of the lease term only.

9. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten (10) days after written request by Lessor. Lessee shall indemnify and hold harmless the Lessor and the State of Hawaii from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorney's fees.

10. Rules and Regulations. Lessor excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Lessee's use of the Premises, which rules and regulations shall be binding upon Lessee upon notice thereof to Lessee. For enforcement of such rules and regulations, if any,

Lessor shall have all remedies in this Agreement and any other remedies allowed by law.

11. Alterations and Improvements. Lessee shall make no alterations to any structure on the Premises or construct any building or make any other improvements on the Premises without the prior written approval of the Director, Department of Parks and Recreation, and the BLNR. Alterations or improvements on the Premises approved by the Director, Department of Parks and Recreation, and the BLNR, made by and paid for by Lessee, with the exception of fixtures which cannot be removed without damage to the Premises, shall, unless otherwise provided by written agreement between the Parties, be the property of Lessee.

12. Fixed Improvements. Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind or description except with the prior written approval of Lessor and upon those conditions the Lessor may impose, including any adjustment of rent, unless otherwise provided in this Lease. All improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of this Lease shall be, and at all times remain, the property of the Lessor.

13. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.

14. Sanitation. Lessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

15. Waste and Unlawful, Improper or Offensive Use of Premises. Lessee shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the Director, Department of Parks and Recreation, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees growing on the Premises at the commencement of the this Lease, as well as any trees that are growing on the Premises during the duration of the this Lease.

Lessee shall not allow the Premises to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

16. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of

any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor and the State of Hawaii from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

17. Rights of Way and Easements. Lessor reserves the right, subject to the approval of the BLNR, to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee which were damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

Lessor further reserves the right to authorize public access over, across, under and through the Premises.

18. Access to Information. Lessee shall provide Lessor and the BLNR with access to Lessee's books, records, assets, facilities, and all other information relative to the use of the Premises, as deemed necessary in the judgment of Lessor and, if applicable, the BLNR.

19. Liability Insurance, Required Coverage. Lessee shall obtain, pay for, and keep in force throughout the period of this Lease comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name Lessor, the State of Hawaii, and their respective officers, employees and agents as "Additional Named Insured", and shall include a duty to defend Lessor, State of Hawaii, and their respective officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Lessee's actions and/or use of Premises.

Unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, Department of Parks and Recreation, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Lessee shall furnish the Lessor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Lease, the Lessee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements.

Unless waived by Lessor and the State of Hawaii, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor and the State of Hawaii thirty (30) calendar days prior written notice of the intended cancellation or termination.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of the Director, Department of Parks and Recreation, the BLNR, or both, Lessee shall obtain and maintain such coverage.

20. Property Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, Department of Parks and Recreation, procure and, during the entire term of this Lease, keep in force and effect special form property insurance covering all of Lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof without deduction for depreciation, providing protection against all risks of loss not otherwise excluded for the Premises, together with insurance against sprinkler damage, vandalism, and malicious mischief, including demolition and debris removal and extended coverage, hurricane/wind coverage, and with inflation guard endorsement, if available in any insurance company qualified to do business in the State of Hawaii and shall, from time to time, deposit promptly with Lessor the policy and premium receipts therefor or a current certificate that such insurance is in full force and effect and shall not be cancelled without written notice to Lessor sixty (60) days prior to the effective date of such cancellation. All such policies shall be made payable to Lessor and Lessee as their interests may appear (it being understood and agreed that Lessor's interest shall be limited to permanent fixtures and other installations which are not removable by Lessee upon the termination of this Lease), and shall provide for a deductible of not more than \$5,000.00. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate in accordance with the provisions of this Lease.

21. Fire Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, Department of Parks and Recreation, procure, at its own cost and expense, and maintain during the period of this Lease, a policy or policies of fire insurance, on all buildings and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the

Director of Finance, and shall pay premiums thereon at the time and place the same are payable. The policy or policies of insurance shall be made payable in the case of loss to the County of Maui, as its interest may appear, and shall be deposited with the County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the County; provided, however that with the approval of the County, Lessee may surrender this Lease and Lessee shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Lessee, if any, in relation to the unexpired term of this Lease and useful life of the improvements at the time of the loss, if any, with the County retaining the remaining proceeds of said proceeds.

22. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

23. Lessor's Lien. Lessor shall have a lien on all the buildings and improvements placed on the Premises by Lessee, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the Premises for all costs, attorney's fees, rent reserved, taxes, and assessments paid by Lessor on behalf of Lessee and for the payment of all money as provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts are paid.

24. Assignment. Lessee may not assign the Lease for the remainder of the Lease term.

25. Sublease. Lessee may not sublease the demised premises.

26. Lessee's Right to Terminate. If Lessee is not in default of the terms of this Lease to be observed and performed, Lessee may terminate this Lease by giving Lessor at least sixty (60) days prior written notice of such termination.

27. Surrender of Premises. At the expiration, revocation, cancellation or termination of this Lease, Lessee shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Lessee from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Lessee.

28. Termination. If Lessee becomes bankrupt, dissolves, becomes inactive, or abandons the leased Premises for a period of four (4) consecutive months, or if this Lease and the leased Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions, and such failure shall continue for a period of more than thirty (30) days after delivery by Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to Lessee at Lessee's last known address, all rights granted hereunder to Lessee shall cease and this Lease shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach or contract; and in the event of such termination, all buildings and improvements there on shall remain and become the property of Lessor, subject to any valid mortgages against the property.

29. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations and National Guard participation.

30. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000).

Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor and the State of Hawaii against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

31. Compliance with Laws. Lessee shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

32. Interpretation Under Hawaii Law. This Lease is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced, and governed under the laws of the State of Hawaii.

33. Gender. The use of any gender shall include all genders, and if there be more than one Lessee or Lessor, then all words used in the singular shall extend to and include the plural.

34. Paragraph Headings. The paragraph headings throughout this lease are for the convenience of Lessor and Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

35. Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants, and conditions hereof.

36. Notices. All notices or demands that are required or may be given under this Lease by one party to another party, or that are required by law, shall be in writing and shall be deemed to have been validly given or served in the following manner: (a) by delivery to the intended addressee; or (b) by depositing the notice with a reputable private courier service for next business day delivery to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties; or (c) by depositing the notice with the United States Postal Service for delivery, postage prepaid, registered or certified mail, return receipt requested, to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties.

A notice shall be deemed received upon personal delivery to the designated address or three days after being deposited with a

private courier service or with the United States Postal Service as described, supra. Rejection of or refusal to accept a notice or the inability to give notice because a notice of a change in address was not given as required by this Paragraph shall be deemed to be receipt of the notice sent when tendered as provided by this Paragraph.

If a party has designated an agent for service of process, notice to the agent shall conclusively be deemed service on the party. A party shall have the right from time to time to change its address for receipt of notice and to specify any other address within the United States of America by giving written notice of the change in address to the other party or parties at least fifteen (15) days in advance. A notice of change of address is effective under this Lease only when actually received.

37. Assistance of Legal Counsel. The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of this Lease, and have thoroughly discussed all aspects of this Lease with their respective counsel. The parties are voluntarily entering into this Lease and no party or its agents, representatives, or attorneys have made any representations concerning the terms or effects of this Lease other than those contained herein.

END OF EXHIBIT "E"